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BEFORE THE ARIZONA CORPORATION COMMISSION  
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Arizona Corporation Commission

DOCKETED

SEP 14 2011

DOCKETED BY

*[Signature]*

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY  
LLC FOR AN EMERGENCY RATE INCREASE.

DOCKET NO. W-04254A-11-0296

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On July 25, 2011, Montezuma Rimrock Water Company LLC ("Montezuma Rimrock") filed with the Arizona Corporation Commission ("Commission") an application for an emergency rate increase, requesting that Montezuma Rimrock be authorized to charge each of its customers a monthly surcharge of \$15.64, which is designed to increase Montezuma Rimrock's annual revenues by \$37,536, thereby making Montezuma Rimrock eligible to obtain a loan of \$165,000 from a private lending institution to fund construction and installation of an arsenic treatment system. The water from Montezuma Rimrock's system currently exceeds the maximum contaminant level ("MCL") for arsenic established by the United States Environmental Protection Agency ("EPA") and enforced by the Arizona Department of Environmental Quality ("ADEQ"). ADEQ, through Amendment #1 to Consent Order in Docket No. DW-36-10, has provided Montezuma Rimrock a deadline of April 7, 2012, to complete construction of the approved arsenic treatment system and to submit an administratively complete application for an Approval of Construction for the arsenic treatment system.

Between July 25, 2011, and August 24, 2011, in this docket, a procedural conference was held; John E. Dougherty was granted intervention; consolidation of this docket with a related docket ("40-252 Docket")<sup>1</sup> was discussed and not ordered; a procedural schedule was established that includes a

<sup>1</sup> The 40-252 Docket is Docket Nos. W-04254A-08-0361 et al., in which the Commission has reopened Decision No. 71317 (October 30, 2009) under A.R.S. § 40-252 in response to a Montezuma Rimrock request for modification of the decision to allow it to obtain financing for arsenic treatment facilities through a loan from a private financial institution rather than through the Arizona Water Infrastructure Finance Authority ("WIFA") loan authorized in the Decision.

1 hearing to be held in this matter on September 22, 2011; and an Affidavit of Mailing and Posting was  
2 filed showing that notice of the hearing has been provided to Montezuma Rimrock's customers by  
3 mail and has been posted at four separate locations in Montezuma Rimrock's service area.<sup>2</sup>

4 On August 31, 2011, in this docket, Mr. Dougherty filed Notice of having filed a Formal  
5 Complaint ("Complaint") against Montezuma Rimrock in Docket No. W-04254A-11-0323  
6 ("Complaint Docket")<sup>3</sup> and a Motion to Stay the proceedings in this docket. Mr. Dougherty asserted  
7 that the Complaint includes numerous allegations supported by substantial documentation that  
8 Montezuma Rimrock has filed materially false and misleading financial statements in Annual Reports,  
9 improperly withheld information during a 2009 Staff audit in its most recent rate case, and made a  
10 false statement on its 2009 WIFA loan application, among other things. Mr. Dougherty asserted that,  
11 in light of the allegations in the Complaint, all proceedings in this docket should be stayed until the  
12 allegations raised in the Complaint have been fully answered by Montezuma Rimrock. Mr. Dougherty  
13 filed a substantially similar Notice and Motion to Stay in the 40-252 Docket.

14 Also on August 31, 2011, in this docket, Montezuma Rimrock filed a Motion for Protective  
15 Order, along with a separate Certificate of Counsel in Support of Motion for Protective Order,  
16 requesting that the Commission quash or severely limit the scope of Mr. Dougherty's data requests so  
17 as to protect Montezuma Rimrock from annoyance, embarrassment, oppression, or undue burden or  
18 expense.

19 On August 31, 2011, Procedural Orders were issued in this docket, the 40-252 Docket, and the  
20 Complaint Docket scheduling a joint procedural conference to be held on September 13, 2011, at the  
21 Commission's offices in Phoenix; requiring each party to attend in person; and requiring each party to  
22 be prepared to discuss the Motion to Stay in this docket, the Motion to Stay in the 40-252 Docket, the  
23 Motion for Protective Order in this docket, how the three dockets should proceed, whether any or all  
24 of the three dockets should be consolidated, and any other appropriate issues.

25 In this docket, since the issuance of the Procedural Order of August 31, 2011, Mr. Dougherty  
26 has filed a Response to Motion for Protective Order, and Staff has filed a Staff Report in which Staff

27  
28 <sup>2</sup> Additional procedural background in this matter is set forth in the Procedural Order issued on August 12, 2011.  
<sup>3</sup> Mr. Dougherty and a co-complainant filed a Formal Complaint in the Complaint Docket on August 23, 2011.

1 recommends denial of Montezuma Rimrock's emergency rate case application.

2       On September 13, 2011, a procedural conference was convened as scheduled before a duly  
3 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,  
4 Arizona. Montezuma Rimrock and Staff appeared through counsel, and Mr. Dougherty appeared pro  
5 se. Montezuma Rimrock and Staff both opposed staying the proceedings in this docket, with  
6 Montezuma Rimrock arguing that the paramount issue should be the quality of customers' drinking  
7 water and that a stay of the proceedings in this docket would not improve that, and Staff arguing that a  
8 stay in this docket would defeat the purpose of the emergency rate case process. Mr. Dougherty  
9 argued that a stay is appropriate because any delay would not be significant, Montezuma Rimrock  
10 purposely avoided service of the Complaint so as to be able to respond to the Complaint after the  
11 hearing in this docket,<sup>4</sup> and Montezuma Rimrock has provided the Commission false financial  
12 information that undermines its assertions as to the necessity for the emergency rate increase. The  
13 parties' arguments were taken under advisement.

14       During the procedural conference, Montezuma Rimrock and Mr. Dougherty agreed to have  
15 Mr. Dougherty review the requested Montezuma Rimrock records,<sup>5</sup> on September 19, 2011, in the  
16 controlled setting of counsel's office, so that Mr. Dougherty can extract the information that he seeks  
17 and make copies as necessary. Montezuma Rimrock also agreed to provide releases of information to  
18 the extent necessary to allow Mr. Dougherty to obtain records from third parties such as banks without  
19 resort to the Commission's subpoena power. As a result of the parties' agreement, which Montezuma  
20 Rimrock stated resolved their discovery dispute, Montezuma Rimrock withdrew its Motion for a  
21 Protective Order in this docket.

22       Regarding the question whether any or all of the three separate proceedings should be  
23 consolidated going forward, Montezuma Rimrock and Staff continued to oppose consolidation, and  
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25 <sup>4</sup> The Complaint was sent to a physical street address for Montezuma Rimrock's office and came back to the  
Commission as undeliverable. Montezuma Rimrock stated at the procedural conference that there is no mail delivery to its  
26 office, only to its post office box.

27 <sup>5</sup> Montezuma Rimrock's owner, Patricia Olsen, asserted for the first time during the procedural conference that some  
documents are missing from Montezuma Rimrock's records and that some entries in Montezuma Rimrock's records  
28 appear to have been altered, both of which Ms. Olsen attributes to Montezuma Rimrock's office's having been  
"burglarized" on several occasions since October 2009. Ms. Olsen also stated that her computer had been "hacked" on  
multiple occasions since October 2009. Ms. Olsen stated that no police reports were filed.

1 Mr. Dougherty conditionally supported consolidation, depending on the rulings on the pending  
2 Motions to Stay. The parties positions on consolidation were again taken under advisement.

3       There is merit to Mr. Dougherty's argument that some of the allegations in the Complaint, if  
4 proven to be true, could call into question some of Montezuma Rimrock's prior assertions as to its  
5 financial position. There is also merit to Staff's argument that the Commission's emergency rate case  
6 process is intended to be and should be expeditious and that any decision granting emergency rates  
7 includes the safeguards of a mandatory bond, a full rate case to follow shortly after the decision, and  
8 the possibility of full refund of any emergency rates collected if the emergency rates are proven to  
9 have been unwarranted when scrutinized in the full rate case. While the Commission is obviously  
10 concerned with ensuring that all of its decisions are based on accurate and full evidentiary records to  
11 the extent possible, the Commission is also mindful that the emergency rate case process is of  
12 necessity designed to be expeditious and limited in scope and that the scope of the allegations made  
13 and to be answered in the Complaint Docket greatly exceed the scope of the relevant issues in this  
14 docket. For these reasons, the Motion to Stay filed in this docket will be denied at this time.

15       IT IS THEREFORE ORDERED that the **Motion to Stay filed in this Docket is hereby**  
16 **denied at this time.**

17       IT IS FURTHER ORDERED that **the procedural schedule established in the Procedural**  
18 **Order of August 12, 2011, continues in effect.**

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1 IT IS FURTHER ORDERED that the administrative and procedural requirements and  
2 deadlines set forth in the Procedural Order of August 31, 2011, continue in effect.

3 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or  
4 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
5 hearing.

6 DATED this 14<sup>th</sup> day of September, 2011.

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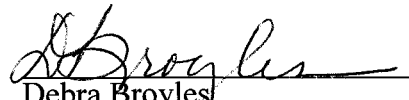
10 SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered and e-mailed  
12 this 14<sup>th</sup> day of September, 2011, to:

13 Patricia D. Olsen, Manager  
14 MONTEZUMA RIMROCK WATER  
COMPANY LLC  
15 P.O. Box 10  
Rimrock, AZ 86335  
patsy@montezumawater.com

Steven Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
Phoenix, AZ 85007

16 Douglas C. Fitzpatrick  
17 LAW OFFICE OF DOUGLAS C.  
FITZPATRICK  
18 49 Bell Rock Plaza  
Sedona, AZ 86351  
19 fitzlaw@sedona.net  
Attorney for Montezuma Rimrock Water  
20 Company LLC

By:   
Debra Broyles  
Secretary to Sarah N. Harpring

21 John Dougherty  
22 P.O. Box 501  
Rimrock, AZ 86335  
jd.investigativemedia@gmail.com

23 Janice Alward, Chief Counsel  
24 Bridget Humphrey, Staff Attorney  
Legal Division  
25 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
26 Phoenix, AZ 85007